

## Small Business Administration

## § 120.1717

or Pool Certificates under the Program if any such Participant or its Associate or Affiliate has:

(1) Failed to comply materially with any requirement imposed by the Program Rules and Regulations or other SBA rules and regulations; or

(2) Made a material false statement or failed to disclose a material fact to SBA.

(b) *Additional rules for suspension or termination of Pool Originator.* In addition to the conditions set forth in paragraph (a) above, SBA may also suspend or terminate the Program participation privileges of a Pool Originator if the Pool Originator (and/or its Associates):

(1) Does not comply with any of the requirements in 120.1703(a) or (c);

(2) Has been revoked or suspended it from engaging in the securities business by its supervisory agency, or is under investigation for a practice which SBA considers, in its sole discretion, to be relevant to its fitness to participate in the Program;

(3) Has been indicted or otherwise formally charged with, or convicted of, a felony, or a misdemeanor which, in SBA's sole discretion, bears on its fitness to participate in the Program;

(4) Has received an adverse civil judgment that it has committed a breach of trust or a violation of a law or regulation protecting the integrity of business transactions or relationships; or

(5) Has been suspended or terminated as a Pool Assembler under 120.631.

(c) *Suspension procedures.* SBA may undertake suspension or enforcement actions under this section using the procedures set forth in § 120.1600(a).

### **§ 120.1712 Seller responsibilities with respect to Seller's Pool Loan.**

Seller shall remain obligated for servicing and liquidating Seller's Pool Loan until the Pool Loan is repaid in full unless SBA provides written approval or notice to the contrary.

### **§ 120.1713 Seller's Pool Loan origination.**

SBA is entitled to recover from the Seller losses incurred by SBA on its guarantee of a Pool if such losses resulted because Seller's Pool Loan was not made and closed in a commercially

reasonable manner, consistent with prudent lending standards, and in accordance with any applicable Program Rules and Regulations.

### **§ 120.1714 Seller's Pool Loan servicing.**

Subject to § 120.1718 of this subpart J, the Seller must service Seller's Pool Loan in a commercially reasonable manner, consistent with prudent lending standards, and in accordance with applicable Program Rules and Regulations. The Seller receives the Servicing Retention Amount for servicing the Seller's Pool Loan.

### **§ 120.1715 Seller's Pool Loan liquidation.**

Subject to § 120.1718 of this subpart J, the Seller must liquidate and conduct debt collection litigation for Seller's Pool Loan in a prompt, cost-effective and commercially reasonable manner, consistent with prudent lending standards, in accordance with applicable Program Rules and Regulations, and with SBA approval of a liquidation plan and any litigation plan, and any amendment of either such a plan, if applicable.

### **§ 120.1716 Required SBA approval of servicing actions.**

Seller shall not, without prior written consent of SBA, take the following actions with respect to Seller's Pool Loan:

(a) Make or consent to any substantial alteration in the terms ("substantial" includes, but is not limited to, any changes to the principal amount or interest rate);

(b) Accelerate the maturity;

(c) Sue; or

(d) Waive or release any claim. Guidance on other servicing actions, some of which may need prior SBA approval, is provided in the Guide.

### **§ 120.1717 Seller's Pool Loan deferments.**

Without the prior written consent of SBA, Seller, at the request of Obligor, may grant one deferment of Obligor's scheduled payments for a continuous period not to exceed three months of past or future installments. Seller shall immediately notify CSA of any

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payment deferment and that notification shall include:

- (a) The SBA Pool Loan number;
- (b) The Obligor's name;
- (c) The terms of such deferment;
- (d) The date Obligor is to resume payment; and
- (e) Reconfirmation of the basis of interest calculation (e.g. 30/360 or Actual Days/365).

### **§ 120.1718 SBA's right to assume Seller's responsibilities.**

SBA may, in its sole discretion, undertake the servicing, liquidation and/or litigation of Seller's Pool Loan at any time and, in such event, Seller must take any steps necessary to facilitate the assumption by SBA of such responsibilities, which can be transferred by SBA at its discretion to a contractor, agent or other entity, and such steps shall include, among other things, providing or assigning to SBA any documents requested by SBA within 15 calendar days of Seller's receipt of such request. SBA will notify the Obligor of the change in servicing.

### **§ 120.1719 SBA's right to recover from Seller.**

SBA is entitled to recover from Seller any monies paid on SBA's guarantee of a Pool Certificate backed in part by Seller's Pool Loan, plus interest, if SBA in its sole discretion determines that any of the following events has occurred:

- (a) Seller's improper action or inaction has put SBA at risk;
- (b) Seller has failed to disclose a material fact to SBA regarding a Seller's Pool Loan in a timely manner;
- (c) Seller has misrepresented a material fact to SBA regarding Seller's Pool Loan;
- (d) Seller has failed to comply materially with § 120.1720 of this subpart;
- (e) SBA has received a written request from Seller to terminate the SBA's guarantee on the Loan Interest in Seller's Pool Loan;
- (f) Seller has failed to comply materially with Program Rules and Regulations; or
- (g) Seller has failed to make, close, service or liquidate Seller's Pool Loan in a prudent manner.

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### **§ 120.1720 SBA's right to review Pool Loan documents.**

In the event that SBA purchases a Loan Interest in Seller's Pool Loan, Seller must provide to SBA copies of the Pool Loan collateral documents, Pool Loan underwriting documents, and any other documents SBA may require in writing within 15 calendar days of a written request from SBA (which SBA will review in connection with its efforts to determine if Seller is obligated to reimburse SBA pursuant to this subpart). A Seller's failure to provide the requested documentation may constitute a material failure to comply with the Program Rules and Regulations and may lead to an action for recovery under § 120.1719. SBA will also evaluate a Seller's continued participation in the Program and may restrict further sales under the Program until SBA determines that the Seller has provided sufficient documentation.

### **§ 120.1721 SBA's right to investigate.**

SBA may undertake such investigation as it deems necessary to determine whether it is entitled to seek recovery from the Seller and Seller agrees to take whatever actions are necessary to facilitate such investigation.

### **§ 120.1722 SBA's offset rights.**

SBA shall have the right to offset any amount owed by Lender to SBA, including, without limitation, an offset against CSA's obligation to pay Lender pursuant to any Section 504 First Mortgage Loan Pool Guarantee Agreement.

### **§ 120.1723 Pool Loan receivables received by Seller.**

Any Pool Loan Receivables received by Seller in connection with obligations under Seller's Pool Loan must be forwarded by Seller to CSA within two business days of receipt of collected funds.

### **§ 120.1724 Servicing and liquidation expenses.**

All ordinary and reasonable expenses of servicing and liquidating Seller's Pool Loan shall be paid by, or be recoverable from, Obligor, and all such ordinary and reasonable expenses incurred